

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

Senate Committee on
Agriculture and
Environmental
Resources
(SC-AER)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤ 97hr_sb0008_pt01

➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

Just a few of the problems the public has experienced with the DNR regarding the half a million dollars in grants they gave to a group of wealthy supporters of the Governor, known as the Cedar Lakes Conservation Foundation, which resulted in a significant reduction of access to Washington County's Big Cedar Lake;

- 1.) Several calls I made to our DNR agent (Tom Blotz) and his supervisor inquiring about the project were not returned until I brought it up in the local newspaper.
- 2.) The DNR agent told the press there would be a publicly held Environmental Assessment meeting. As more discrepancies in the project were brought out by the press, the DNR said they had determined no meeting was necessary.
- 3.) The DNR also determined no Environmental Impact statement was necessary. Information regarding the loss of over half the previously available access, and destruction of a tax-paying historically significant business in exchange for less than 5% retention of total sedimentation going into the lake was thereby suppressed from being a factor to be weighed into the decision. Discrepancies in the appraisal of the site were also ignored, as was some misleading information given out by the DNR.
- 4.) DNR agents repeatedly told the press that 37 car/trailer parking spots were "the maximum allowed by law", according to their interpretation of NR 190.1. They avoided letting the public know that they have worked with various groups on other lakes to achieve more than those guidelines.
- 5.) In a written review and response to the hundreds of concerned citizens who responded to their Environmental Assessment for the project, the DNR informed the public that inclusion of an additional ramp and rest room facilities, promised in the CLCF's original proposal, were denied by the Town of West Bend. When the town board was made aware of this claim, and town chairman Robert Seebach was told in a phone call to DNR rep. Dan Kaemmerer that he had received that information from the grant recipient, they sent a letter to DNR Secretary Meyer informing him that no such applications or requests were made, and asked the DNR to correct the misinformation they had sent out. The town board's letter also questioned the propriety of a grant applicant or recipient to assist or co-author an Environmental Assessment, or to be allowed to do so without the DNR checking to verify their claims. The town board then asked that the project be placed in abeyance until an investigation of procedure and preparation of the Environmental Assessment could be completed. All the Town Board's requests were ignored.

Many in our community have lost faith in our DNR because of what we have seen here. Had there been a Public Intervenor, none of this may have ever happened, and if it did, at least the public would have some way to verify that DNR actions were proper and serving their best interests. As we have seen in the Big Cedar Lake fiasco, we have lost that assurance. Please restore the accountability of our DNR to the public. Please restore the Public Intervenor's office.

Attn: Tom Blotz
DNR DISTRICT OFFICE
2300 King Drive
Milwaukee, WI 53212

RE: J.J. DOCKERS ACQUISITION PROJECT

We the undersigned citizens hereby submit for your consideration objections and corrections to the statements outlined in your Environmental Analysis Report. Subjects are identified by section number and page number.

Section 1-Page 2: This property was appraised by Richard Larkin at \$403,000. Does this appraisal include the value of the former business and buildings? The appraised value as provided by the DNR (Steve Stilski) on 1/22/96 listed values:

Land	\$335,000
Buildings	160,000

The appraiser utilized for this project was selected by the CLCF and his fee was reimbursed by the DNR. Under the circumstances, good business practice would dictate that the appraiser be solely under the influence of the DNR. Shouldn't the DNR now have an independent appraisal made of this property?

Section 2-Page 3: Your statement indicates that the buildings were not historically significant. Based on the public outcry that accompanied the "middle-of-the-night" bulldozing of these buildings, nothing could be farther from the truth.

The sedimentation figures used throughout this report are overstated and misleading. According to the Washington County Land Conservation Department figures, 6.5 tons of sediment flow through this site yearly (not the 12 tons recent CLCF releases have attempted to document). Furthermore, all sedimentation figures quoted for this site fail to take into consideration the fact that much of the acreage involved has since been converted from tilled farmland to out-of-cultivation grassland.

Section 2-Page 4: Throughout this DNR report and specifically in this section, misleading language is used to describe a situation that, in effect, deprived the public of substantial access to Big Cedar Lake. The statement "60 parking stalls were no longer available when the former business ceased operations" attempts to mitigate the fact that these stalls were very much available until the CLCF closed the business down.

(more)

PAGE 2

Section 6 page 6: Missing entirely here is the fact that a second pier and ramp are absolutely necessary at this site to insure adequate safety and landing capabilities during severe weather conditions.

Also missing entirely are the rest room facilities required to keep the lake from being used as a toilet and to provide a decent facility for the public. Concern for the quality of this lake would seem to demand this need be addressed. Another glaring omission is the failure to provide the telephone facilities that public safety and convenience will require.

Section 15-Page 9: Factual data indicates that the environmental consequences of sedimentation runoff through the J.J. Dockers site have been greatly overstated and are, in relation to the overall sedimentation and pollution of the lake, of little or no threat to the quality of the lake. Somewhere between 2% and 3% of the total flow of sedimentation to Big Cedar Lake occurs here and the proposed ponds will only reduce, not stop that flow. This is insignificant in comparison to other easily corrected pollution sources including failing riparian septic systems, over fertilized lawns directly on the lake and, last but not least, excessive riparian power boat traffic and useage. Also contributing heavily to lake pollution are the weed cutting operations carried out by lake organizations. These operations stir up huge amounts of sediment, cloud the water and are in general detrimental to the native aquatic environment.

Also misleading is the language describing the proposed ponds effect in "reducing the pollutant load from the subwatershed by 80%". 80 percent of 2-3 percent is a miniscule achievement, particularly at a cost to the taxpayer of over \$400,000 and the accompanying loss of public access the proposed ponds will cause.

Section 17-Page 10: Your statement that this proposal "will transform a privately owned and operated property into public green space that will provide enhanced recreational opportunities" is a bald misstatement of the facts. We are compelled to ask: Does the DNR really consider the loss to the public of 60 parking stalls, 35 boat slips, a restaurant, rest rooms and phone facilities enhancement?

Further aggravating the public is your concluding statement: "but this will have minimal impact on the overall recreational opportunities available throughout the entire boating season". We can only assume that you refer to riparian recreation, not the public who owns this lake.

(more)

Section 27-Page 18: While the many town and county board meetings are listed, your report fails to mention that heated opposition to this project by board members caused the many delays. In both cases, conditional use permits were approved only when the DNR informed board members that state funds would be granted regardless of their approval. Board members then voted, under duress and against their wishes, for "the lesser of two evils".

Section 28-Page 19: Under News Media and Citizen Contacts, your report fails to mention that local and state media supported opponents of this project and that the hundreds of citizen "contacts" were actually vociferous critics of the project.

SUMMARY

Included in your report is a letter dated 12-8-95 to Dan Kaemmerer of the DNR from Mr. Geoffrey Maclay. His letter confirms what residents of this area have known for years: The CLCF's activities in the area of environmental conservancy is to a large extent devoted to keeping the public off of and away from Big Cedar Lake. While this selfish behavior is perhaps understandable, what is not easy to comprehend is why the DNR persists in using public funds to support these interests against the interests of the general public.

Finally, the general public is extremely interested in preserving the quality of our lakes. Our opposition to the J.J.Dockers project is for our children and grandchildren. What we will not permit is the take-over of these resources by a small but determined minority of influential riparian owners. These lakes are for all of us.

NAME

ADDRESS

DATE

Andy Voelyhe 621 S. 15th Ave West Bend 12-10-96

Debra Moeck 932 Linden St. West Bend 12-10-96

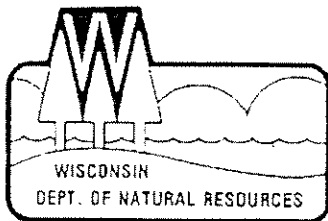
Donald J. Bill 5047 Lake Dr West Bend 12-10-96

Ben Schmidt 6741 Ruston Lane West Bend 12-10-96

Clunk Schellenger 4775 Glen View Parkway W.B. 12-10-96

Werner B. Wagner 4820 N. Merten Dr., Hartford, 12-10-96

Gregory Palmer 9280 Orchard Valley RD 12-10-96
West Bend



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary
Gloria L. McCutcheon, Regional Director

Southeast Regional Headquarters
2300 N. Dr. ML King, Jr. Drive, Box 12436
Milwaukee, WI 53212-0436
TELEPHONE 414-263-8500
FAX 414-263-8483
TDD 414-263-8713

January 30, 1997

File Ref: 8700

Dear Concerned Citizen:

The Wisconsin Department of Natural Resources (Department) has completed the review of public comments on the Environmental Assessment that was prepared on the proposed Cedar Lakes Conservation Foundation - Gonring Drive Land Acquisition Project. The purpose of the Environmental Assessment was to inform the public about this proposed project and to determine if an Environmental Impact Statement on this proposed project is necessary. The Environmental Assessment was released for public and agency review on December 3, 1996, and the public comment period expired at 4:30 pm on December 19, 1996.

The Department considered all of the comments that were received in making its decision regarding this project. The Department has determined that an Environmental Impact Statement is not required for this project and that the Department has complied with s. 1.11, Stats., and Ch. NR 150, Wisconsin Administrative Code. This decision on the Environmental Assessment relates to whether the environmental effects of this project were fully considered to the extent possible under existing statutory authorities.

The Department will be awarding a cost-sharing assistance grant of \$203,805 to the Cedar Lakes Conservation Foundation for the Gonring Drive Land Acquisition Project. Grant funds will be awarded from the Department's Lake Management Protection Grant and Urban Green Space Programs.

Enclosed is the summary of public and agency comments on the Environmental Assessment prepared on the proposed Cedar Lakes Conservation Foundation - Gonring Drive Land Acquisition Project. The signed certification of compliance with the Wisconsin Environmental Policy Act (WEPA) and the notice of appeal rights is attached to the summary.

Thank you for your interest and concern in this effort and participating with us in making this decision.

Sincerely,

Dan Kaemmerer
Land/Recreation Specialist

proposed project site for a \$10.00 fee charged by private vendors. While these parking spaces did not meet standards under NR 1.91(7) for providing public access for a reasonable fee, many anglers and recreational boaters used this parking lot. Because these 60' parking stalls were no longer available when the former businesses ceased operation, and because the site development plan provides for only 10 additional car/trailer parking stalls and two additional car/trailer parking stalls that are accessible to people with disabilities, overall there is a net loss of potential parking stalls on Big Cedar Lake. The impact of this decrease will likely be felt during peak periods of use such as weekends, the opening day of the fishing season, holidays and during fishing tournaments.

Bank One of West Bend, which acquired the property in bankruptcy proceedings, held title to the property since 1993. Existing zoning requirements, the deteriorated condition of the restaurant and bar, and the strong real estate market pressure for residential development indicate that it would have been very unlikely that the property would have been sold by Bank One for a similar commercial use. If the property had been sold for residential development, this also would have resulted in the loss of parking at the site provided by former private vendors, but with no further public access development as is proposed in this project by the Cedar Lakes Conservation Foundation. It is the intent of both the Department and the Cedar Lakes Conservation Foundation to mitigate this loss of 60' parking stalls by meeting the maximum level of car/trailer parking units for providing public access in accordance with NR 1.91 of the Wisconsin Administrative Code through the implementation of this project. (Please see public comment No. 2 and the Department's response below.)

*NOTE: Beginning on page 4 and continuing throughout the document, the Environmental Assessment states that, prior to the acquisition of the Gonring Drive property by the Cedar Lakes Conservation Foundation, 60 private parking stalls were provided for a fee by various businesses at the project site. The Washington County Land Conservation Department has calculated that a maximum of 44 parking spaces were provided at the project site. "Using the assumption that everyone using the lot did so in an orderly fashion (as if it were paved, lined and attended) we came up with a maximum of 44 parking spaces possible, yielding a net loss of only 24 parking spaces when considering the improvements proposed to the DNR (Department of Natural Resources) by the CLCF (Cedar Lakes Conservation Foundation)." (Correspondence from the Washington County Land Conservation Department dated December 16, 1996)

2. Public Comment: The proposed project restricts public access to Big Cedar Lake.

Department Response: Currently, Big Cedar Lake meets the minimum public access requirements in NR 1.91 of 27 car/trailer parking units, with 24 car/trailer parking units available at the WDNR's Gonring Drive parking

SUMMARY OF PUBLIC AND AGENCY COMMENTS
ON THE
ENVIRONMENTAL ASSESSMENT
PREPARED ON THE PROPOSED
CEDAR LAKES CONSERVATION FOUNDATION - GONRING DRIVE
LAND ACQUISITION PROJECT

INTRODUCTION

In accordance with s. 1.11, Stats., and Ch. NR 150, Wisconsin Administrative Code, an Environmental Assessment was prepared on the proposed Cedar Lakes Conservation Foundation - Gonring Drive Land Acquisition Project in order to provide public input and review of this proposed project and to determine if an Environmental Impact Statement on this proposed project is required. The Environmental Assessment was released for public and agency review on December 3, 1996, and the public comment period expired at 4:30 pm on December 19, 1996.

During the public comment period, a total of 305 public responses were received by the Department of Natural Resources (Department). Of these, 20 were telephone calls, 96 were letters and 10 petitions signed by 189 citizens were submitted. In addition, the Department received technical comments and corrections to the Environmental Assessment from the Washington County Land Conservation Department and the Washington County Land Use and Park Department.

The technical comments and corrections to the Environmental Assessment provided by the Washington County Land Conservation Department and the Washington County Land Use and Park Department are listed on the Environmental Assessment errata sheet that is attached to this document. Listed below are summary statements of the pertinent comments that were received during the public comment period (December 3 - December 19, 1996) and the Department's response to these comments. The 10 petitions received listed several comments and concerns. These concerns included the certified fair market value of the Gonring Drive property, the demolition of the bar and restaurant, sedimentation of Big Cedar Lake, public access, the loss of 60 parking stalls, the need for a ramp, restroom facility and telephone service, enhanced recreational opportunities, the cost of the proposed project, the location and design of the proposed storm water detention ponds, the need for an Alternative Public Access and Waterway Protection Plan and overcrowding of the lake.

SUMMARY STATEMENTS OF PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSE

1. Public Comment: There will be a loss of car/trailer parking stalls available to the public on Big Cedar Lake.

Department Response: Overall, there will be fewer total parking stalls on Big Cedar Lake. Prior to the acquisition of the property by Bank One through bankruptcy proceedings and the subsequent acquisition of the property by the Cedar Lake Conservation Foundation, there were as many as 60 private business-operated parking stalls available at the

lot and three additional car/trailer parking units available at the Boetcher Drive roadside parking location. With the future construction by the Cedar Lakes Conservation Foundation of 10 additional car/trailer parking stalls plus two additional car/trailer parking stalls that are accessible to people with disabilities, Big Cedar Lake will have 37 public parking stalls (plus 2 disabled-accessible units) and thereby meet the maximum level of car/trailer parking units for providing public access in accordance with NR 1.91 of the Wisconsin Administrative Code.

3. Public Comment: The Department should use the grant funding to construct more than the proposed number of parking stalls at the proposed project site, or provide additional parking stalls by expanding the Department's Conring Drive parking lot or by developing a new, additional parking lot.

Department Response: With the future construction by the Cedar Lakes Conservation Foundation of 10 additional car/trailer parking stalls (plus two additional car/trailer parking stalls that are accessible to people with disabilities), Big Cedar Lake will have 37 public parking stalls (plus two disabled-accessible units) and thereby meet the maximum level of car/trailer parking units for providing public access in accordance with NR 1.91 of the Wisconsin Administrative Code.

Under NR 1.91(5)(b), "The department has determined that granting of permits for boating access on bodies of water where the maximum access standards are exceeded will materially impair navigation and is detrimental to the public interest. The department may not pursue public boating access development nor may it approve permits or provide financial assistance for public boating access beyond the levels described in this subsection unless greater levels are established in a plan (an Alternative Public Access and Waterway Protection Plan)."

Facilities exceeding maximum public boating access are permissible only if an Alternative Public Access and Waterway Protection Plan is developed under NR 1.91(6) and is approved by the Department. An alternative boating access and waterway protection plan is approvable only if the plan includes consideration of environmental as well as social and developmental factors that are listed in NR 1.91(6)(b)1 and if the Department determines that such "plans and implementing ordinances are consistent with protection of public health, safety, and welfare, the objectives of s. NR 1.90 and include an accurate analysis of the issues in par. (b). (Please see Attachment 12 of the Environmental Assessment, NR 1.90 - NR 1.92, Wisconsin's Public Access Administrative Code).

According to NR 1.91(6) of the Wisconsin Administrative Code, less than the minimum or more than the maximum public access to a lake, as defined in the public access code (NR 1.91), may be provided by the Department or a local government if an Alternative Public Access and Waterway Protection Plan is developed and implemented. If a local government (lake management district, town, county) develops such a plan, the plan must follow local planning procedures. If a local unit of government

wants to consider drafting an Alternative Public Access and Waterway Protection Plan, Department staff are available to assist.

4. Public Comment: Big Cedar Lake often is overcrowded and there are frequent user conflicts. These problems could be alleviated by strict enforcement of speed limits, time-of-day use restrictions and other similar measures.

Department Response: Local units of government have the authority to address these issues for health and safety reasons under s. 30.77, Wisconsin Statutes. Speed limits, time zones or spacial zones are regulations a local unit of government may enact to minimize these problems. The Department has the authority to review these regulations.

5. Public Comment: Alternative Four on Page 13 of the Environmental Assessment discusses expansion of the Department's Gonring Drive parking lot. The estimated cost of \$200,000 to expand the Department's Gonring Drive parking lot is excessive.

Department Response: The \$200,000 projected cost to expand the Department's Gonring Drive parking lot is only an estimate, but it is based on our experience with similar projects. The expanded development of the WDNR Gonring Drive parking lot would require major alterations of the terrain and topography of the land as well as slope stabilization. As discussed above, the Department is limited to the same maximum of 37 car/trailer parking spaces as defined in the public access code (including the 24 parking stalls at the WDNR's Gonring Drive site and the three parking stalls at the Boetcher Drive site) unless an Alternative Public Access and Waterway Protection Plan is developed and implemented. In addition, Department funds for development are limited and the project would need to be placed on a priority list. Grant funds for local cooperative projects are more readily available.

6. Public Comment: The site plan for the proposed project does not include restroom facilities. Restroom facilities will be needed at the project site.

Department Response: The Department agrees that restroom facilities located at the project site would improve the project and accommodate the public use of the proposed parking lot and adjoining boat launch. Restroom facilities were included in the Cedar Lakes Conservation Foundation's original proposal. The Town of West Bend denied the inclusion of restroom facilities for this project when it issued the conditional use permit to the Cedar Lakes Conservation Foundation.

7. Public Comment: The proposed turnaround and storm mooring pier will improve the present launch site and enhance boater safety.

Department Response: The Department agrees.

8. Public Comment: In addition to a storm mooring pier, the project should include a boat ramp to ensure safe egress from the lake during storm conditions.

Department Response: An additional boat ramp would improve the project and provide for safer egress from the lake during storm conditions. The present boat launch is located on the Town of West Bend's right-of-way and is the responsibility of the town. An additional boat ramp would also be located on this right-of-way and would also be the responsibility of the town. The Town of West Bend has denied the inclusion of an additional boat ramp for this project. A permit under Section 30.12, Wisconsin Statutes, from the Department would be necessary for the installation of an additional boat ramp.

9. Public Comment: The stormwater detention ponds are not needed. The stormwater detention ponds, as designed, won't be effective. The stormwater detention ponds should be located elsewhere.

Department Response: The construction of three stormwater detention ponds on the parcel will reduce the annual pollutant load from suspended solids from the subwatershed by 80% and thus improve the water quality and aquatic habitat of Big Cedar Lake. This includes significant reductions of several pollutants entering the lake from the subwatershed, including phosphorous, organic material, bacteria, heavy metals, pesticides, polycyclic aromatic hydrocarbons (PAHs) and other toxic substances.

The Washington County Land Conservation Department designed the stormwater detention basin. The Department reviewed these design plans and issued a permit for their construction. The Washington County Land Conservation Department has determined that the proposed size and location of the stormwater detention basin are necessary to reduce the sediment and pollutant load entering the lake through this property.

10. Public Comment: The proposed landscaping of the project site will help restore the site to a more natural condition.

Department Response: The proposed grading and landscaping of the project site (trees, shrubs, flowers, grasses) will improve the physical appearance of the site and will help to restore the site to a more natural condition. The site is presently comprised of a large, former gravel parking lot on the western portion and the leveled area of the demolished commercial structure on the balance of the property.

11. Public Comment: If the Cedar Lakes Conservation Foundation wouldn't have acquired the property (in order to develop it as proposed), the property would have probably been sold for residential development.

Department Response: This concern was also discussed in the Department's response to public comment No. 1 above. If the Cedar Lake Conservation Foundation had not acquired the property from Bank One of West Bend, which acquired the property in bankruptcy proceedings in 1993, the

property most likely would have been sold for residential development in accordance with current zoning requirements. Current zoning, the deteriorated condition of the restaurant and bar, plus the strong real estate market pressure for residential development indicate that it would have been very unlikely that the property would have been sold by Bank One for a similar commercial use. If the property had been sold for residential development, this also would have resulted in the loss of parking at the site provided by former private vendors. In addition, no further public access development, as is proposed in this project by the Cedar Lakes Conservation Foundation, would have been provided. While the stormwater culvert would probably have been removed in the residential development of the site, the annual sediment load entering the lake through this property would have continued or possibly increased.

12. Public Comment: State grant funds for this project are/are not necessary.

Department Response: State cost-sharing grant assistance for this project is necessary in order for the public benefits to be realized. The \$203,805 cost-sharing grant award is for the costs incurred by the Cedar Lakes Conservation Foundation in the acquisition of the property. Grant funds will be awarded from the Lake Management Protection Grant and Urban Green Space Programs. Without the provision of Lake Management Protection Grant Program funds for this acquisition, the Cedar Lake Conservation Foundation possibly would not construct the stormwater detention ponds. As discussed above, if the Cedar Lakes Conservation Foundation had not acquired the property from Bank One of West Bend, the property would have most likely been sold for residential development.

We anticipate that Cedar Lakes Conservation Foundation will also apply for Recreational Boating Facility cost-sharing assistance for developing the property as proposed.

If no state grant assistance is awarded for this project, the land would remain as privately owned open space (with or without the ponds) or possibly be sold for residential development. If the ponds were not constructed, the water quality and aquatic habitat benefits from the installation of the stormwater detention ponds would not be realized. The degradation of Big Cedar Lake, as impacted by the annual pollutant load of 12 tons of sediment entering the lake through this property, would continue. Without the construction of 12 additional parking stalls, Big Cedar Lake would provide only the minimum public access - 27 parking stalls - as defined in NR 1.91, and there would be no parking stalls accessible to people with disabilities.

The long-term environmental effects of this project are positive: the transformation of a privately owned and operated property into public green space that will provide enhanced recreational opportunities and improved water quality and aquatic habitat for Big Cedar Lake. This is why the Department is awarding the Lake Management Protection and Urban Green Space grants. Through a deed restriction that is placed on the property as a requirement of the grant, the property must remain as

public green space in perpetuity and be used for the purposes for which public grant funds were expended.

13. Public Comment: The proposed stormwater detention ponds will provide additional herpetological (amphibian) habitat.

Department Response: The proposed stormwater detention ponds may provide a minimal amount of additional herpetological habitat.

ERRATA SHEET
ON THE
ENVIRONMENTAL ASSESSMENT
PREPARED ON THE PROPOSED
CEDAR LAKES CONSERVATION FOUNDATION - GONRING DRIVE
LAND ACQUISITION PROJECT

1. On page 3, the third full paragraph, incorrectly describes the subwatershed area as 42 acres. "The subwatershed that delivers an estimated 12 tons of sediment to Big Cedar Lake is 192 acres, not 42 acres. The 42 acres is merely a portion of the 192 acres which is hydrologically separate from the other 150 acres until both converge at the west end of the Docker's property." (Washington County Land Conservation Department)
2. On page 6, number 5, it states that approximately 4,000 cubic yards of top soil are to be excavated, and 700 yards of top soil are to be backfilled. "It would be more accurate to state that the 4,000 yards is not topsoil at all, but rather a combination of sand and gravel fill and silty/clayey subsoil." An estimated "1,000 yards of topsoil will have to be imported as very little is available at the site." (Washington County Land Conservation Department)
3. On page 8, number 11, second paragraph, it would be more accurate to qualify the Casco and Radford soils to be the native soil types. "Existing surface layers are more a product of recent excavation and filling by previous owners, consisting of sand/gravel and pavement." (Washington County Land Conservation Department)
4. Page 8, number 11, in the middle of the third paragraph should read:

"A private well and two septic tanks had served the former commercial structure. ~~The An old point~~ well and one septic tank have been abandoned. A drilled well remains on the property. The second septic tank, which was used as a lift station, has been drained and sealed per directions from the Washington County ~~Land Conservation Department~~ Land Use and Park Department. Buried below these demolished buildings is a stormwater culvert which discharges into Big Cedar Lake just south of the launch ramp at the foot of Gonring Drive." (Washington County Land Conservation Department and Washington County Land Use and Park Department)
5. Throughout the Environmental Assessment, the reader should understand that the "three stormwater detention ponds" proposed for construction actually comprise a stormwater retention basin consisting of a forebay, intermediate and main basin. (Washington County Land Conservation Department)
6. On page 6, number 7, the Environmental Assessment describes fencing, asphalt paving and other items that may be included in the project site development. These items will require county permits and were not included in the conditional use permit issued by Washington County. However, the conditional use permit can be revised to include these items. This county permit requirement should also be included on page 3, number 3, Authorities and Approvals. (Washington County Land Use and Park Department)

ENVIRONMENTAL ASSESSMENT
PREPARED ON THE PROPOSED
CEDAR LAKES CONSERVATION FOUNDATION - GONRING DRIVE
LAND ACQUISITION PROJECT
TOWN OF WEST BEND, WASHINGTON COUNTY

CERTIFIED TO BE IN COMPLIANCE WITH WEPA


Regional Environmental Coordinator

1-30-97
Date Signed

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to sections 227.52 and 227.53, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review.

Note: Not all Department decisions respecting environmental impact, such as those involving solid waste or hazardous waste facilities under sections 144.43 to 144.47 and 144.60 to 144.74, Stats., are subject to the contested case hearing provisions of section 227.42, Stats.

This notice is provided pursuant to section 227.48(2), Stats.

TOWN OF WEST BEND

6355 Hwy Z
West Bend, WI 53095

Ph: 414-338-3417
Fax: 414-338-0427

February 13, 1997

Mr. George E. Meyer, Secretary
Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921

Dear Mr. Meyer,

The Town Board of the Town of West Bend at its regular monthly meeting February 12, 1997 took action to communicate concern regarding the Environmental Assessment prepared on the proposed Cedar Lakes Conservation Foundation land acquisition project. This Environmental Assessment was signed by James Morrissey, dated January 30, 1997.

Under Summary Statements of Public Comments and the Department's Response items 6 and 8 (unnumbered pages) Mr. Morrissey erred in detailing information regarding the Town Board denying inclusion of rest room facilities and a storm mooring pier. Enclosed are copies of items 6 and 8.

Please be advised no application or other requests were made for restroom facilities or piers. Nothing was brought before the Town Plan Commission or Town Board and at no time did the Town Board address or take any action regarding rest room facilities or piers. Nothing was on a Town Board agenda in these matters. Accordingly, the Town Board of the Town of West Bend request you take necessary action to correct or delete items 6 and 8 in the Environmental Assessment prepared by Mr. Morrissey and resubmit these pages with a cover letter of explanation to the several hundred recipients.

It is my understanding, as indicated in item 8 of the Environmental Assessment, a permit under Section 30.12 Wis. Stats. from your department would be required for installation of a boat ramp or pier. The Town Board has no knowledge of a permit being applied for or any application made. There is one DNR pier located at the Gornring Drive access. A few years ago, your Department requested the Town's cooperation to provide facilities for disadvantage individuals at this pier and the Town indicated to your department complete cooperation in this important project. There has been no action taken by your department as of this date.

It is my understanding Big Cedar Lake Protection and Rehabilitation District had an agenda item for a resolution to request funds for a DNR grant or funding under Section 30.92 Wis. Stats. Recreational boating projects. This was dropped since the Big Cedar Lake Protection and Rehabilitation District had no ownership, interest or agreement with owners of the subject parcel.

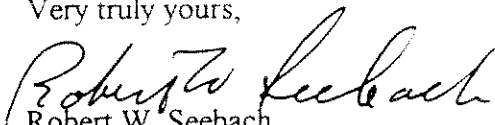
In a telephone conversation with Mr. Daniel Kaemmerer, Land/Recreational Specialist, of your Department January 10, 1997, he stated he obtained information from the Cedar Lakes Conservation Foundation regarding denial by the Town of West Bend rest room facilities and a second pier. I questioned whether it was usual procedure for an applicant or recipient of a grant or other funding to assist or co-author an Environmental Assessment. Mr. Kaemmerer stated he supplied information for the Environmental assessment. At no time was the Town of West Bend contacted to substantiate any detail of the Environmental Assessment.

The Town Board of the Town of West Bend requests that, in addition to your correcting the inaccuracies in the environmental assessment, this project be placed in abeyance until an investigation of procedure and preparation of the Environmental Assessment is completed.

Your cooperation in this matter is appreciated. If you have any questions please feel free to contact me

On behalf of the Town Board of the Town of West Bend,

Very truly yours,


Robert W. Seebach
Chairman

RWS:djs

enclosures

cc: Town Board Supervisors

Group goes to court to stop lake project grant

Cleanup work limits access
to Big Cedar Lake, it claims

By TOM VANDEN BROOK
of the Journal Sentinel staff

West Bend — A group opposed to a state-funded pollution control project on Big Cedar Lake filed a request Monday in Washington County Circuit Court to have the funding stopped.

Taxpayers United For Lake Access asked the court to review a \$203,805 Department of Natural Resources grant to the Cedar Lakes Conservation Foundation because it reduces public access to the lake, the group contends.

"We're looking to stop this grant," said Jim Rubenzer, a member of the taxpayers' group and a longtime critic of the project. "We think the DNR has acted improperly and has done nothing to protect the public interest."

Petitioners accused the DNR of acting in collusion with the private foundation to reduce access to the lake.

"We further contend that the department has acted as an accessory to the CLCF in designing and promoting a project of dubious worth that is contrary to the public interest," they wrote in their request.

The foundation's president, Geoffrey Maclay, could not be reached for comment Monday.

The project site, located on Goring Drive, had been occupied by a bar and restaurant that rented parking spaces for about 60 boat trailers.

The foundation's plans call for sedimentation ponds and 12 stalls for cars with trailers.

In a study released in January, DNR officials deemed the project worthy. They did note that it would result in a net loss of public and rented parking spaces available on the lake.

But the DNR report added that the project's 12 stalls would be public, not rented. Twelve is

MILWAUKEE JOURNAL SENTINEL

TUESDAY, FEBRUARY 25, 1997

The DNR made the \$203,805 grant to help offset the \$475,000 the foundation paid for the land.

Anglers and others opposed to the project contend that the project's stated concerns conceal its real goal: limiting public access to the lake.

The project's goal is to remove most of the sediments from nearby lands that drain through the lake.

Wisconsin law allows citizens to request courts to review such state actions within 30 days.

Petition's Case

Reasons cited in the petition include:

- An overestimate of the pollution control benefits of the project.

- The failure of the proposed

Please see LAKE page 2

Lake/Group aims to stop project

From Ozaukee/Washington page

project to provide adequate parking, piers, boat ramps and restroom facilities.

- Lack of access for those with disabilities for ice fishing.

Typically in such cases, the court examines the DNR's record on the matter and reviews the decision, said Timothy Andryk, a department attorney based in Madison.

The judge will either uphold the DNR's decision or hand it back to the DNR for further consideration. The court's decision may also be appealed.

The entire process, Andryk said, can take months or years.

The taxpayers' association has company in chiding the DNR. The Town of West Bend board recently sent a letter to the department secretary, complaining that the study supporting the grant contained inaccurate information.

The DNR report said the town board, which granted permits to the foundation for the project, denied requests for restrooms and other facilities at the site. But board members say they never took up such a request, much less denied it.

An assistant to George Meyer, the DNR secretary, said he would respond to the letter in early March.

Council likely to back
Columbia Road
project in Cedarburg

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MILWAUKEE JOURNAL SENTINEL

SECTION B INSIDE

IN THE NEWS

Five finalists make cut for Washington seat

West Bend — Five finalists have made the cut for interviews to become Washington County's first administrative coordinator.

The county's Administrative Committee met Friday, trimming the list of 13 finalists to five, according to Kenneth Miller, County Board chairman. Candidates are:

■ Gordon Ellis, administrative coordinator for Shawano County.

■ Charles Erickson, who earlier announced he would be leaving his position as Hartland village administrator.

■ Richard Gruber, former administrative coordinator for

Town officials bristle at DNR error

West Bend board chief says apology not enough on Big Cedar Lake project

By TOM VANDEN BROOK
of the Journal Sentinel staff

Town of West Bend — State Department of Natural Resources officials have acknowledged they erred in stating the town's role in a controversial pollution control project on Big Cedar Lake, according to a letter sent to town officials.

But a state official contended the errors did "not materially affect the department's decision" to approve the proposal by the

Cedar Lakes Conservation Foundation or to award it a grant of more than \$200,000.

The department's response, however, did not appease Robert Seebach, West Bend town chairman.

"Basically, what they said was, 'We apologize, thanks, and goodbye,'" Seebach said. "But they're not going to take any corrective action. I think this is something that should concern all the people in the state."

Seebach and town officials raised the issue last month, shortly after the DNR approved a grant to the foundation for its project.

The board took issue with the

DNR for asserting that it had denied the foundation's request to build restrooms and boat ramps at the site.

The board never received such requests. When board members saw inaccurate information in a report on the project, they asked the DNR to suspend its funding and investigate its procedures.

In a letter to the board, Jim Morrissey, the DNR's regional environmental coordinator, admitted state officials were "re-miss in not confirming" information in its report with town officials.

But, Morrissey continued, the inaccuracies pertained to future development plans and did not

Robert Seebach:

"This is something that should concern all the people in the state."

affect the DNR's decision to award grant money to buy the land.

Seebach disagreed with Morrissey. He maintained that the DNR should not have relied on the potential recipient of a grant as a source of information.

"I think it had a great effect on their decision," Seebach said. "But apparently the DNR doesn't mind giving the co-

author of its report a \$200,000 grant."

The department awarded the foundation \$203,800 to help offset the \$475,000 the non-profit organization paid to purchase about two acres on Conring Drive.

The department deemed the sedimentation ponds and 12 public parking stalls proposed at the site worthy of state funding.

But recreational users of Big Cedar Lake have argued that the project, on the lot of an old bar and restaurant, reduces parking and thus access to the lake.

A local group has asked the Washington County Circuit Court to review the DNR's decision.

Bring back state public intervenors

Brown County and Army Corps of Engineers claim that just a small group of "environmentalists" blocked the toxic Kidney Island expansion offshore from Bay Beach Amusement Park, resulting in high costs for taxpayers.

But the truth is that the expansion was stopped because it was proven in court twice that the government can't be trusted to abide by the law and protect water quality in the bay.

Local citizens had to counter technical arguments by several lawyers and experts brought in by the Brown County Harbor Commission, Wisconsin Department of Natural Resources and the Corps. Against the odds, we won.

But victory came at a high personal cost to citizens: measured in tears, sleepless nights and frustration. Why should we have to do the DNR's job?

This is the same case the county, Corps and DNR lost to attorney Thomas Dawson of the Wisconsin Public Intervenor's Office in 1988. Dawson was harshly criticized, and this case was used by Republicans as an argument for closing the Intervenor's Office in 1995.

But this case shows why we need the intervenors back. It's a travesty that we local citizens had to dig in our own pockets, spend thousands of dollars and use up years of our private lives to protect a valuable *public* resource (the bay) that belongs to everyone, while government agencies freely used our own tax dollars against us.

It's shameful that under Gov. Tommy Thompson we can't rely on the DNR for protection. The judge's decision vindicates Dawson and shows that the public intervenors did serve a valuable function — protecting the public's interest in natural resources.

The truth is that the inflexibility of the Corps and county, and the uselessness of the DNR, led to millions of dollars in unnecessary costs and years of delay.

For 13 years, they could have looked for alternatives, but pure stubbornness kept them locked into this project at all costs. They never tried to shift the \$20 million in federal funds to alternative projects. They simply dug in their heels and refused to budge for 13 years.

If this means Brown County taxpayers will be forced to pay more for harbor maintenance, the Corps, county and DNR are responsible, not "environmentalists."

In fact, taxpayers shouldn't pay any of these costs — whether from federal or local tax funds. The county and Corps blame "environmentalists" for the high cost of sediment disposal for maintaining the Green Bay harbor when they should be going after the polluting industries along the Fox River that are truly responsible for all this trouble.

Ironically, several of these industries



Rebecca Katers

are the prime users of the harbor. They polluted their own shipping channel and should pay the extra cost that resulted. Taxpayers should be reimbursed for costs already levied over the past 30 years due to harbor contamination.

The county and Corps ignored thousands of petition signatures, letters, yard signs and testimony from ordinary local citizens who opposed the expansion. They refused to hold public hearings to allow citizens to express strong opposition.

Years of effort and millions of dollars could have been saved if the agencies had been more open to public discussion and more responsive to local voters.

Unfortunately, they are continuing bad behavior patterns, creating a Citizen Advisory Committee to develop a land-use plan for Kidney Island stacked with hand-picked people they are comfortable with.

When will officials learn that openness, public hearings and true community outreach efforts will actually save headaches over time because planners will learn the full range of strong concerns in the community and head off legal confrontations like this 13-year Kidney Island struggle?

Rebecca Leighton Katers of Green Bay is executive director of the Clean Water Action Council of Northeast Wisconsin, Inc.. You can write to her at 2220 Deckner Ave., Green Bay, WI 54302 or cwca@execpc.com

7/15/97

Green Bay Press Gazette

Key findings in the decision

By Susan Campbell
Press-Gazette

State Administrative Law Judge Jeffrey Boldt on Monday denied a water quality certification permit for the proposed Renard Island expansion.

In considering the permit, the judge had to determine whether there was "reasonable assurance" that tripling the 55-acre island would not disrupt water circulation in the bay and lower dissolved oxygen — oxygen in the water that is necessary for fish and other aquatic life to breathe — to unacceptable levels.

Central to deciding that issue was whether an updated computer model of the bay, designed by the U.S. Army Corps of Engineers to show water flow patterns before and after the island's enlargement, could convincingly predict the expansion's impact on water quality.

A six-day hearing last summer pitted testimony from corps engineers and the state Department of Natural Resources against expansion opponents who argued the model failed to prove its accuracy.

Among the opponents were shoreline residents, environmentalists and Dr. Kwang Lee — the scientist who gathered key data used in the model for a student project but testified that it was dated and inadequate for a project the magnitude of Renard Isle.

Boldt's decision concluded that the model was not convincing. Following are some of his key findings:

- Boldt cited testimony from the hearing that the model failed to

prove its credibility during testing. The model's results originally did not match a pronounced dissolved oxygen slide in the lower Fox River that had been recorded at a continuous monitoring site from July 14 to Aug. 17, 1983.

- When the model failed to recreate the drop in dissolved oxygen, the corps theorized that the difference was caused by a drop in algae growth during the recorded slide, because algae creates oxygen. The corps further theorized that the algae growth was slowed because recent July rains had stirred up the sediments, allowing less sunlight to reach the plants.

Boldt cited in his decision the reaction of expert witness Dr. Kwang Lee to the corps' theories: "Dr. Lee testified that he was 'personally professionally shocked' as a scientist to see a sensitive parameter adjusted to artificially force model results to match field data."

The judge concluded: "There is not sufficient support in the record to justify the 'possibility' that the DO sag was caused by a (decrease in water clarity), and thus a reduction in the production of algae, due to the rainfall runoff conditions."

- Boldt cites "significant" testimony by a state Department of Natural Resources water quality modeler that data from a monitoring station near Renard Isle — where the model predicted the most violations of the state standard for dissolved oxygen levels — was "fair to poor." Data from a monitoring station north of the island was rated "very poor" because it collected no data during the model's calibration, he notes.

- Boldt cited dissatisfaction with

the model among members of a Technical Review Panel, a scientific panel convened to review the model's accuracy after the expansion was denied permitting the first time.

The consensus of the panel at its final meeting in March 1993 was that "the model has a ways to go" before it could prove its ability to make engineering predictions.

Panelist Dr. Keith Bedford, who reported that consensus, all but condemned the project in a follow-up letter to the U.S. Army Corps of Engineers dated March 24, 1993.

The Bedford letter prompted William Rito, the corps engineer overseeing the Renard Isle project, to circulate a memo that depicted a coffin labeled "Renard Isle CDF" with the comment, "This may be the final nail!"

Testifying at last year's permit hearing about what he'd meant by the memo, Rito said the panel's panning of the model meant another delay in the project that could result in federal funding for the \$20 million expansion drying up.

Most of the panel members testifying at last year's hearing said they now supported the model.

Noting that no significant changes were made to the model since the panel's 1993 consensus, Boldt speculated in his decision that "this change of heart had more to do with concerns over a possible loss of federal funding than anything to do with making good engineering judgments."

- Boldt discussed the loss of bay waters "on a grand scale" if the island were to be expanded but admitted that the issue is outside the realm of this case and his authority.